

AMENDED IN SENATE JUNE 28, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 641**

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**Introduced by Assembly Member Torrico**

February 21, 2007

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An act to amend Section 66007 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 641, as amended, Torrico. Developer fees.

Existing law prohibits a local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities from requiring the payment of those fees or charges until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first, except that the agency is authorized to require the payment of those fees and charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated, and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy, or (2) the fees or charges are to reimburse the local agency for expenditures previously made. If the fee or charge is not fully paid prior to issuance of a building permit, existing law authorizes the local agency issuing the building permit to require the property owner, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge within the specified time.

This bill would provide that the specified exemption to the existing prohibition does not apply *except by developer fees levied for school*

*construction purposes*, to units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least 49% of the total units are reserved for occupancy by lower income households, as defined, at an affordable rent, as defined. The bill would provide that fees and charges exempted under the bill from payment prior to the date of final inspection or issuance of the certificate of occupancy shall become immediately due and payable when the residential development no longer meets the lower income household occupancy requirements. The bill would authorize a city, county, or city and county to require the posting of a performance bond or a letter of credit from a federally insured, recognized depository institution, in addition to the contract required under existing law, to guarantee payment of any fees or charges that are subject to the exemption provided under the bill.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 66007 of the Government Code is  
2 amended to read:  
3 66007. (a) Except as otherwise provided in subdivision (b),  
4 any local agency that imposes any fees or charges on a residential  
5 development for the construction of public improvements or  
6 facilities shall not require the payment of those fees or charges,  
7 notwithstanding any other provision of law, until the date of the  
8 final inspection, or the date the certificate of occupancy is issued,  
9 whichever occurs first. However, utility service fees may be  
10 collected at the time an application for utility service is received.  
11 If the residential development contains more than one dwelling,  
12 the local agency may determine whether the fees or charges shall  
13 be paid on a pro rata basis for each dwelling when it receives its  
14 final inspection or certificate of occupancy, whichever occurs first;  
15 on a pro rata basis when a certain percentage of the dwellings have  
16 received their final inspection or certificate of occupancy,  
17 whichever occurs first; or on a lump-sum basis when the first  
18 dwelling in the development receives its final inspection or  
19 certificate of occupancy, whichever occurs first.  
20 (b) (1) Notwithstanding subdivision (a), the local agency may  
21 require the payment of those fees or charges at an earlier time if

1 (A) the local agency determines that the fees or charges will be  
2 collected for public improvements or facilities for which an account  
3 has been established and funds appropriated and for which the  
4 local agency has adopted a proposed construction schedule or plan  
5 prior to final inspection or issuance of the certificate of occupancy  
6 or (B) the fees or charges are to reimburse the local agency for  
7 expenditures previously made. “Appropriated,” as used in this  
8 subdivision, means authorization by the governing body of the  
9 local agency for which the fee is collected to make expenditures  
10 and incur obligations for specific purposes.

11 (2) (A) Paragraph (1) does not apply to units reserved for  
12 occupancy by lower income households included in a residential  
13 development proposed by a nonprofit housing developer in which  
14 at least 49 percent of the total units are reserved for occupancy by  
15 lower income households, as defined in Section 50079.5 of the  
16 Health and Safety Code, at an affordable rent, as defined in Section  
17 50053 of the Health and Safety Code. In addition to the contract  
18 that may be required under subdivision (c), a city, county, or city  
19 and county may require the posting of a performance bond or a  
20 letter of credit from a federally insured, recognized depository  
21 institution to guarantee payment of any fees or charges that are  
22 subject to this paragraph. Fees and charges exempted from  
23 paragraph (1) under this paragraph shall become immediately due  
24 and payable when the residential development no longer meets  
25 the requirements of this paragraph.

26 (B) *The exception provided in subparagraph (A) does not apply*  
27 *to fees and charges levied pursuant to Chapter 6 (commencing*  
28 *with Section 17620) of Part 10.5 of Division 1 of Title 1 of the*  
29 *Education Code.*

30 (c) (1) If any fee or charge specified in subdivision (a) is not  
31 fully paid prior to issuance of a building permit for construction  
32 of any portion of the residential development encumbered thereby,  
33 the local agency issuing the building permit may require the  
34 property owner, or lessee if the lessee’s interest appears of record,  
35 as a condition of issuance of the building permit, to execute a  
36 contract to pay the fee or charge, or applicable portion thereof,  
37 within the time specified in subdivision (a). If the fee or charge is  
38 prorated pursuant to subdivision (a), the obligation under the  
39 contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) “Final inspection” or “certificate of occupancy,” as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

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